



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 25, 1997

Ms. Monita Rose Johnson-Henley
Staff Attorney
Texas Department of Housing and
Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

OR97-2601

Dear Ms. Johnson-Henley:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110665.

The Texas State Affordable Housing Corporation ("TSAHC") received a request for its Internal Revenue Service ("IRS") form 1023 and for detailed general ledgers by fund for every TSAHC fund, except the El Cenizo fund for fiscal years ending August 31, 1995 and August 31, 1996. You state that the TSAHC does not have any information regarding IRS form 1023, but have enclosed IRS form 1024. You assert that this form as well as the requested ledgers are excepted from required public disclosure based on section 552.103 of the Government Code.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). In this instance, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). *In re D & A Realty, Inc.*, Cause No. 92-21915-L-11 (Bankr. S.D. Tex. filed Aug. 26, 1997). The requested records may be withheld.¹

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 110665

Enclosures: Submitted documents

cc: Ms. Kelly Haragan
Henry, Lowerre, Johnson, Hess & Frederick
202 West 17th Street
Austin, Texas 78701
(w/o enclosures)

¹If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).